

Application No. 10/649,152
Amendment Date 8/31/05
Response to Office Action of July 14, 2005

PATENT
Docket Number: 1810US01-EE

REMARKS

This is in response to the Office Action of July 14, 2005. Claims 16-18 and 20-45 are currently pending.

Interview Summary Record

Applicant thanks the Examiner for the courtesy shown to Anneliese M. Seifert in the interview of August 26, 2005. The Examiner indicated that the objections to the Information Disclosure Statements in paragraphs 1, 2 and 3 of the Office Action along with the objections to the disclosure in paragraphs 5-11 would be withdrawn.

Objections to the Information Disclosure Statements

The Office Action stated that the Information Disclosure Statements of August 27, 2003, March 16, 2005, and April 18, 2005 would not be entered because the relevance of non English language documents was not included. With respect to the Information Disclosure Statement of August 27, 2003, Applicant stated that the non-patent literature document Arbeitsgruppe/Technikfelder provided general information about spacer woven fabric or spacer knitted fabric. With respect to the Information Disclosure Statement of March 16, 2005, Applicant submitted English language abstracts for foreign patent documents JP09154888 and DE20213369 along with the International Search Report which shows both references were cited as part of the general state of the art. With respect to the Information Disclosure Statement of April 18, 2005, Applicant stated in the Information Disclosure Statement of August 27, 2003 that the non-patent literature document Arbeitsgruppe/Wirkerei provided general information about spacer woven fabric or spacer knitted fabric.

In the interview of August 26, 2005, the Examiner indicated that these objections would be withdrawn.

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Objections to the Specification

In paragraph 10 of the Office Action, the Office Action stated that the Substitute Specification of April 18, 2005 was not entered because it did not include a statement as to the lack of new matter. In the interview of August 26, 2005, Applicant pointed out to the Examiner that a statement of lack of new matter appeared on page 2 of the Amendment submitted with the Substitute Specification. The Examiner indicated that this objection would be withdrawn. With respect to the objections to the Specification in paragraphs 5-9 and paragraph 11, these objections were dealt with in the Amendments to the Substitute Specification, and should be withdrawn when the Substitute Specification is entered. Paragraph 11 of the Office Action objected to the Amendment of April 18, 2005 because it introduced new matter into the disclosure, specifically the polyurethane coating being preferably air-permeable. In the interview of August 26, 2005, Applicant discussed with the Examiner that original claim 6 included this language and because original claim 6 was part of the Application as filed the addition of that language into the Specification is not new matter. The Examiner indicated that this objection would be withdrawn.

Rejections Under 35 U.S.C. §103(a)

The Office Action rejected claims 6-18, 20-24, 26-28, 30, 33-34 and 42-45 under 35 U.S.C. §103 as unpatentable over Hemphill (U.S. Patent No. 5,150,487A) and in view of Miller (U.S. Patent No. 5,014,724). The Office Action also rejected claim 25 under 35 U.S.C. §103(a) as unpatentable over Hemphill in view of Miller, and further in view of Failor (U.S. Patent No. 5,860,174A). Finally, the Office Action rejected claims 31, and 35-41 under 35 U.S.C. §103(a) as unpatentable over Hemphill.

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Independent claims 16, 43, 44 and 45 state that the rescue underlay comprises spacer woven fabric. Applicant continues to submit that Hemphill, Miller and Failor do not teach or suggest a rescue underlay that includes spacer woven fabric. The Office Action acknowledges that Hemphill does not disclose a material being a spacer woven fabric, a spacer woven fabric being knitted, or the spacer woven fabric having a thickness from about 4 millimeters to about 20 millimeters. The Office Action uses Miller to teach the spacer woven fabric feature of the present invention. However, Miller does not teach spacer woven fabric.

Miller teaches a pediatric immobilization device comprising a rigid panel encapsulated within a cover means, shown in Figs. 1, 2, 3 as a fabric cover (14) and described in the specification at column 3 lines 50-56. "The cover (14), which encapsulates the rigid panel (12), is preferably constructed of a durable, washable material such as nylon, rayon or canvas. The selected cover material should be easy to clean and disinfect, and yet durable enough to withstand harsh treatment, either in the field or in the hospital." See Miller column 3 line 65 to column 4 line 2. Further, Figs. 1, 2, and 3 of Miller show at item number 14 what appears to be a woven fabric cover. What is not shown in Figs. 1, 2 or 3 or disclosed in the specification in column 3 or 4 is a spacer woven fabric. The combination of Hemphill and Miller teaches an evacuation restraint as taught by Hemphill where the rectangular base sheet (1) of Hemphill is covered by a fabric cover (14) as taught by Miller. To interpret that the woven fabric cover shown in Figs. 1, 2 and 3 of Miller is the same as the spacer woven fabric in independent claims 16, 43, 44, and 45 of the present application is not giving proper weight to the use of the word "spacer" in the independent claims. A spacer woven fabric is different from a traditional woven fabric and these differences are described in the specification on page 3 of the substitute

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specification. The shortcomings of Hemphill and Miller are not remedied by the disclosure of Failor.

With regard to claim 20, the Office Action states that the manner of forming the woven material (i.e. by knitting) is not germane to the issue of patentability of the device itself, and therefore the limitation has not been given patentable weight. The Applicant submits that describing the fabric as a spacer knitted fabric does not merely describe the manner in which the woven material is formed, but rather is describing a material having specific structural features to it. Page 3 of the Substitute Specification describes spacer knitted fabric starting on line 10 and states "spacer knitted fabrics have textile outer surfaces of greater width of stitch link, the outer surfaces being connected by spacer threads and held at the desired distance." Applicant respectfully requests that the element "spacer knitted fabric" be given patentable weight.

Summary

It is respectfully submitted that each of the pending claims is in condition for allowance, and notification to that effect is kindly requested. The Examiner is invited to contact the Applicant's primary attorney-of-record, Anneliese Seifert, at (651) 795-5661, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

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Dated: August 31, 2005

By: Anneliese M. Seifert
Name: Anneliese M. Seifert
Reg. No. 54,434

RECEIVED

JUL 19 2005 INTELLECTUAL PROPERTY	Application No. 10/849,152	Applicant(s) POST, HARALD	
	Examiner Tara L. Mayo	Art Unit 3671	

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 18 April 2005.

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 16-18 and 20-45 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) _____ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 18 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some * c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20050316 and 20050418

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 27 August 2003 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, Applicant has not filed an explanation of relevance of the non-patent literature document to Arbeitsgruppe/Technikfelder.

2. The information disclosure statement filed 16 March 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. Specifically, Applicant has not filed an explanation of relevance of foreign patent documents JP09154888 and DE20213369

3. The information disclosure statement filed 18 April 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been

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placed in the application file, but the information referred to therein has not been considered. Specifically, Applicant has not filed an explanation of relevance of the non-patent literature document to Arbeitsgruppe/Wirkerei.

Drawings

4. The drawings were received on 18 April 2005. These drawings are acceptable.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.

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- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

5. The disclosure is objected to because of the following informalities: omitted section headings, and reference to the claims. Appropriate correction is required.

6. The use of the trademark VELCRO has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

7. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP §608.01.

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the

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printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

9. The abstract of the disclosure is objected to because it includes language that can be implied and miscellaneous text.

On line 1, delete "Disclosed is a" and insert therefor --A--.

On the last line delete "(Fig. 5)."

Correction is required. See MPEP § 608.01(b).

10. The substitute specification filed 18 April 2005 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: Applicant did not submit therewith a statement as to a lack of new matter under 37 CFR 1.125(b).

11. The amendment filed 18 April 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: on page 7 at line 26 of the marked-up copy, the polyurethane coating preferably being air-permeable.

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Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

12. The prior claim objections have been overcome by the response filed 18 April 2005.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 16 through 18, 20 through 24, 26 through 28, 30, 33, 34, and 42 through 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Miller (U.S. Patent No. 5,014,724).

Hemphill '487, as seen in Figures 1 through 3, discloses a rescue underlay for a mattress comprising:

with regard to claims 16 and 43 through 45,

- a. a substantially flat material (1, 2), wherein the material is substantially the size of a mattress;
- b. at least one pull member (L); and
- c. at least one patient securing belt (20 and 21);

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with regard to claim 17,

further comprising at least one mattress retaining band (16 and 19);

with regard to claim 18,

wherein the material comprises plastic (col. 2, lines 48-54);

with regard to claim 22,

wherein the material is fire-resistant (col. 2, lines 48 through 54);

with regard to claim 23,

wherein the material further comprises a coating on the underside (col. 2, lines 48 through 54);

with regard to claim 24,

wherein the coating is a plastic film (i.e., Teflon);

with regard to claim 26,

wherein the plastic film exhibits a lower sliding friction than the material;

with regard to claim 27,

wherein the coating is water-impermeable;

with regard to claim 28,

wherein the coating is washable;

with regard to claim 30,

wherein the coating is readily disinfected,

with regard to claim 33,

wherein the material comprises a plurality of layers (1 and 2) of substantially flat material fixedly attached to each other (col. 2, lines 54 through 56);

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with regard to claim 34,

wherein the at least one patient securing belt is attached to the underlay mat by sewing
(col. 3, lines 12 through 16);

with regard to claim 42,

wherein the at least one pull member is loop; and

with regard to claims 43 and 44,

wherein the material provides a spring travel.

With regard to claim 45, the method steps recited therein are inherent to the use of the
device disclosed by Hemphill '487.

Hemphill '487 discloses all of the features of the claimed invention with the exception(s)
of:

with regard to claims 16 and 43 through 45,

the material being a spacer woven fabric;

with regard to claim 20,

the spacer woven fabric being knitted; and

with regard to claim 21,

the spacer woven fabric having a thickness from about 4mm to about 20 mm.

Miller '724, as seen in Figures 1 and 2, shows a pediatric immobilization device
comprising a substantially flat material (14), wherein the material is a spacer woven fabric.

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With regard to claims 16, 20 and 43 through 45, it would have been obvious to one having ordinary skill in the art of beds at the time of invention to modify the device shown by Hemphill '487 such that the flat material would be woven as taught by Miller '724. The motivation would have been to include a material having a relatively high tensile strength.

With regard to claim 20, the manner of forming the woven material (i.e., by knitting) is not germane to the issue of patentability of the device itself. Therefore, the limitation has not been given patentable weight.

With regard to claim 21, Hemphill '487 in view of Miller '724 discloses the invention except for the thickness of the woven fabric. It would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to make the material between 4mm and 20mm thick, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

15. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A) in view of Miller (U.S. Patent No. 5,014,724) as applied to claim 24 above, and further in view of Failor (U.S. Patent No. 5,860,174A).

Hemphill '487 as modified above by Miller '724 discloses all of the features of the claimed invention with the exception(s) of:
with regard to claim 25,

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the plastic film being selected from the group consisting of polyurethane, polyester, and combinations thereof.

Failor '174, as seen in Figures 2 and 4, discloses a patient transfer mattress assembly (10) comprising a top mattress section (12) having a bottom surface (12B), wherein the bottom surface comprises a fluoropolymer film (i.e., Teflon) combined with a polyester fabric substrate (col. 2, line 64 through col. 3, line 5) for low friction, chemical and flame resistance, and barrier properties.

With regard to claim 25, it would have been obvious to one having ordinary skill in the art of beds at the time of invention to modify the device shown by the combination of Hemphill '487 and Miller '724 such that it would include a plastic film as taught by Failor '174. The motivation would have been to enhance the barrier properties of the coating.

16. Claims 31 and 35 through 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemphill (U.S. Patent No. 5,150,487A).

Hemphill '487 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 31,

the material further comprising a braking surface exhibiting a higher sliding friction than the material;

with regard to claims 35 through 38,

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tunnel-like receptions;

with regard to claim 39,

three patient securing belts;

with regard to claim 40,

the underlay being permanently affixed to a mattress; and

with regard to claim 41,

the underlay being integrated into a mattress.

With regard to claim 31, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device shown by Hemphill '487 such that it would include a braking surface. The motivation would have been to restrict the mobility of the mattress on the underlay.

With regard to claims 35 through 38, it would have been obvious to one having ordinary skill in the art of beds at the time the invention was made to modify the device shown by Hemphill '487 such that it would include tunnel-like receptions for the patient securing belts to protect the same against wear during use, and to permit movement and/or replacement of the belts.

With regard to claim 39, Hemphill '487 discloses the claimed invention except for three patient securing belts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an additional patient securing belt, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

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With regard to claims 40 and 41, Hemphill '487 discloses the claimed invention except for the underlay being permanently affixed to or integrated into a mattress. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the underlay integral with a mattress, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. In re Lindber, 93 USPQ 23 (CCPA 1952).

Response to Arguments

17. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a material which has two fabric cover layers which are held at a spacing of a few millimeters by distance-maintaining bridge threads) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

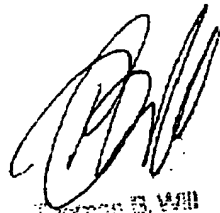
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



11 July 2005



Thomas B. Will
Supervisory Patent Examiner
Jul 11 2005